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May 11, 2004

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

Re: In the Matter of  
Request for Comment on Petitions  
Regarding Directv's DBS Service to  
the States of Alaska and Hawaii  
Media Bureau Docket No. 03-82

Dear Ms. Dortch:

On March 29, 2004, Directv Inc., filed with the Commission a copy of a news release announcing changes in the programming packages offered by Directv to consumers in Hawaii.<sup>1</sup> In assessing the impact of these changes, the State urges the Commission to keep in mind the arguments raised in the State's February 6, 2004 Petition for Administrative Sanctions ("Petition"),<sup>2</sup> which helped to initiate the Commission's investigation into Directv's lack of compliance with its geographic service requirements.<sup>3</sup>

The State's Petition against Directv raised two primary issues: (1) the absence of comparable programming available to consumers in Hawaii and (2) the absence of retail outlets

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<sup>1</sup> See News Release, *DIRECTV Expands Programming Lineup in Hawaii* (March 25, 2004), included as an attachment to Letter From James H. Barker, Latham & Watkins LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 03-82; IB Docket No. 98-21 (March 29, 2004).

<sup>2</sup> See *Petition for Administrative Sanctions of the State of Hawaii*, MB Docket No. 03-82 (Feb. 6, 2003) ("Petition").

<sup>3</sup> See Public Notice, *Media Bureau Action: Request For Comment On Petitions Regarding Directv's DBS Service To The States Of Alaska And Hawaii*, DA 03-869, MB Docket No. 03-82 (March 25, 2003) ("*Directv Investigation Public Notice*").

Marlene H. Dortch  
Page 2

May 11, 2004

authorized by Directv to sell its services and reception equipment to consumers in the State.<sup>4</sup> Although Directv appears to have made progress on the first issue, Directv has made no progress on the second issue. Only a handful of stores appear to carry Directv's equipment in Hawaii, none of them on Oahu, by far the State's most populous island.

### **Absence of Directv Authorized Retail Distributors**

Directv markets its DBS service and distributes consumer reception equipment using a number of different methods. According to Directv's website, the "easiest way to get a DIRECTV System is to order online from DIRECTV.com."<sup>5</sup> When potential customers in Hawaii following these instructions and attempt to purchase Directv's service online, however, they still receive a message stating:

For a DIRECTV® System appropriate for your state, please visit a dealer near you. To find one on DIRECTV.com, go to "GET DIRECTV," select "Find a Local Retailer" and enter your ZIP code.<sup>6</sup>

Directv has also authorized an independent online retailer, American Satellite & Entertainment, to market Directv services and equipment on the Internet.<sup>7</sup> The company's website, however, states "We Only Sell Product Within the Continental U.S."<sup>8</sup>

Most of Directv's dealers are nationwide retail chains, such as Circuit City, Blockbuster and WalMart.<sup>9</sup> As in the past, however, none of Directv's national retailers market Directv's service in their Hawaiian outlets.<sup>10</sup> Directv has repeatedly attempted to minimize the impact of this problem, claiming that it cannot control the inventory and buying decisions of its authorized retailers.<sup>11</sup> Directv, however, has failed to explain why its authorized national retailers are willing to market Directv's service in most of the country, but not in Hawaii.

Directv also distributes its DBS service through independent retailers. Directv claims to have authorized five independent retailers in the State, but none of them operate stores on Oahu,

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<sup>4</sup> See *Petition* at i.

<sup>5</sup> [http://www.directv.com/DTVAPP/buy/buy\\_directvin123.dsp](http://www.directv.com/DTVAPP/buy/buy_directvin123.dsp) (last visited April 7, 2004).

<sup>6</sup> <http://www.directv.com/DTVAPP/NewHardwareHome.do> (last visited May 11, 2004).

<sup>7</sup> See <http://www.directv.com/DTVAPP/buy/OnlineRetailers.dsp> (last visited May 7, 2004).

<sup>8</sup> [http://www.americansatellite.com/cart/ord\\_viewcart.asp?SID=UWHZBG10447968S7WR58REPD47TMRF3BGA](http://www.americansatellite.com/cart/ord_viewcart.asp?SID=UWHZBG10447968S7WR58REPD47TMRF3BGA) (last visited May 7, 2004).

<sup>9</sup> See <http://www.directv.com/DTVAPP/DealerLocatorServlet> (last visited May 7, 2004).

<sup>10</sup> See *id.*

<sup>11</sup> See, e.g., *Opposition of Directv Inc.*, MB Docket No. 03-82 at 19 (April 24, 2003).

Marlene H. Dortch  
Page 3

May 11, 2004

Hawaii's major population center.<sup>12</sup> As a result, more than 70% of the State's population lacks convenient and reliable access to distributors of Directv's DBS services.

Section 25.148(c) of the Commission's rules requires Directv to provide DBS service to Hawaii where such service is technically feasible from the authorized orbital location.<sup>13</sup> In order to meet this requirement, Directv must not only use its satellite network to broadcast programming to Hawaii, it must also make available to consumers in Hawaii reception equipment that is capable of receiving Directv's service. Until Directv corrects this problem, it is violating both the letter and intent of the Commission's geographic service requirements.

### **Absence of Local Broadcast Programming**

Directv has repeatedly argued before the Commission and Congress that its ability to offer local broadcast programming is a significant factor in its DBS subscriber growth.<sup>14</sup> DirecTV has also claimed that it "will be the strongest possible competitor to cable *only if* it can provide consumers with their local broadcast channels."<sup>15</sup> Despite these claims, Directv does not offer local broadcast programming in Hawaii and has announced no plans to offer local broadcast programming in Hawaii until between 2006 and 2008.<sup>16</sup>

Honolulu is one of the largest Designated Market Areas ("DMAs") in the country that is currently not receiving local broadcast programming from Directv or scheduled to receive it by the close of 2004.<sup>17</sup> Hawaii has more than five times as many DMA households as other markets that are already receiving local broadcast programming from Directv. Specifically, Honolulu is

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<sup>12</sup> See <http://www.directv.com/DTVAPP/DealerLocatorServlet> (last visited May 7, 2004). Two of the five retailers listed on Directv's website operate stores on the Island of Hawaii, one operates a store on Maui and one operates a store on Kauai (although Directv's website incorrectly indicates that Kauai store is located on the Island of Hawaii). The fifth retailer has a Honolulu mailing address, but does not have a store on Oahu and takes orders only over the telephone.

<sup>13</sup> See 47 C.F.R. § 25.148(c) (2002).

<sup>14</sup> See, e.g., *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Eighth Annual Report, 17 FCC Rcd 1244, ¶ 59 (2002) (citing *Comments of Directv, Inc.*, CS Docket No. 01-129 at 12-13 (Aug. 3, 2001)).

<sup>15</sup> See *Letter from William M. Wiltshire, Counsel for The News Corporation, et al., to Marlene H. Dortch, Secretary, Federal Communications Commission*, MB Docket No. 03-124, at 4 (Sept. 22, 2003) (*emphasis in original*).

<sup>16</sup> See, e.g., *Letter from Richard E. Wiley, Counsel to General Motors Corporation and Hughes Electronics Corporation*, to Marlene Dortch, Secretary, Federal Communications Commission, MB Docket No. 03-124 (Sept. 22, 2003) (stating that Directv plans to launch a new generation of satellites as early as 2006 and no later than 2008 that will enable Directv to provide local channels in all 210 designated market areas).

<sup>17</sup> See <http://www.directv.com/DTVAPP/LocalChannelsAction.do#now> (last visited on May 7, 2004) (listing DMAs that currently receiving local broadcast programming from Directv and additional DMAs that will receive local broadcast programming by the end of 2004).

Marlene H. Dortch  
Page 4

May 11, 2004

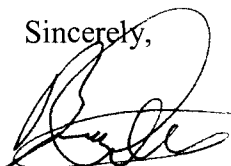
the 71st largest DMA in the country. Directv is already providing local broadcast programming to DMAs as small as market 182 (Greenwood-Greenville, Mississippi) and has announced plans to provide local broadcast programming to DMAs as small as market 152 (Rochester, Minnesota-Mason City, Iowa-Austin, Minnesota) by the end of 2004.<sup>18</sup>

In raising this issue, the State is aware that Directv does not have unlimited satellite capacity. Furthermore, DBS licensees are not currently required to provide local broadcast programming in every market on the same schedule. Nevertheless, Directv's decision to provide local broadcast programming in substantially smaller DMAs on a more rapid schedule provides further evidence of the DBS licensee's longstanding disregard for the more than one million consumers in Hawaii.

Directv has been providing DBS service in the United States for nearly ten years, but has overtly avoided providing comparable DBS services in Hawaii, even when faced with Commission rules and license conditions mandating comparable services. In light of the significant shortcomings that continue to exist in the DBS services that Directv makes available in Hawaii, the State urges the Commission to continue its investigation into Directv's lack of compliance with its geographic service requirements.

Thank you for your attention to this matter. Please let us know if you have any questions.

Sincerely,



Herbert E. Marks  
Bruce A. Olcott  
Counsel for the State of Hawaii

cc: J. Barker, Latham & Watkins

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<sup>18</sup> See *id.*